2 Am. Jur. 2d Administrative Law III A Refs.

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III. Meetings and Records; Disclosure to Public

A. Meetings; in General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

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A.L.R. Index, Administrative Law
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§ 79. Number of members necessary to act; time of meetings

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West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124, 125

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Validity of Super-Majority Voting Requirements in Constitutional, Statutory, and Other Public Provisions, 28 A.L.R.6th 439

Forms

Forms relating to meetings and hearings, generally, see Am. Jur. Pleading and Practice Forms, Administrative Law [Westlaw® Search Query]

A "quorum" is the number of members of a larger body that must participate for the valid transaction of business.[1] A quorum generally consists of a simple majority of a collective body; in the absence of a statutory provision contrary to the common law, a majority of such a quorum is empowered to act for the body.[2] However, a supermajority of those present may be required by statute.[3] All members of the collective body must have had notice and the opportunity to act.[4]

Observation:

Vacancies in membership caused by the death, resignation, ineligibility, failure to qualify, abstention, or incapacity of individual

members do not affect the legality of acts of a public body so long as they are authorized by a majority of its membership constituting a quorum.[5]

Footnotes

1 New Process Steel, L.P. v. N.L.R.B., 560 U.S. 674, 130 S. Ct. 2635, 177 L. Ed. 2d 162 (2010).

2 F.T.C. v. Flotill Products, Inc., 389 U.S. 179, 88 S. Ct. 401, 19 L. Ed. 2d 398 (1967); Aziken v. District of Columbia Alcoholic Beverage Control Bd., 29 A.3d 965 (D.C. 2011); Barton v. South Carolina Dept. of Probation Parole and Pardon Services, 404 S.C. 395, 745 S.E.2d 110 (2013).

3 Mix v. City of New Orleans, 126 So. 2d 1 (La. Ct. App. 4th Cir. 1960) (two-thirds required).

4 Brown v. District of Columbia, 23 Ct. Cl. 505, 127 U.S. 579, 8 S. Ct. 1314, 32 L. Ed. 262 (1888); Carroll v. Alabama Public Service Commission, 281 Ala. 559, 206 So. 2d 364 (1968).

5 U.S. Vision, Inc. v. Board of Examiners for Opticians, 15 Conn. App. 205, 545 A.2d 565 (1988); Hawaii Electric Light Co., Inc. v. Department of Land and Natural Resources, 102 Haw. 257, 75 P.3d 160 (2003), as amended on other grounds, (Aug. 25, 2003).

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§ 80. What members are counted

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Ex officio members of a board are counted in determining the presence of a quorum.[1] In addition, a substitute member duly designated in accordance with a statute in place of an absent or disqualified member is a member whose vote counts in determining the required number of votes.[2]

For purposes of determining whether a legal quorum is present, a member who is disqualified whether because of interest, bias, prejudice, or other good cause or because he or she has voluntarily recused him- or herself is not counted.[3] The fact that the member is physically present and his or her name is on the final decision is irrelevant in such a case.[4] One who merely abstains, however, is counted towards the quorum.[5]

Footnotes

1 Louisville & Jefferson County Planning & Zoning Com'n v. Ogden, 307 Ky. 362, 210 S.W.2d 771 (1948).

2 Real Properties v. Board of Appeal of Boston, 311 Mass. 430, 42 N.E.2d 499 (1942).

3 Garris v. Governing Bd. of South Carolina Reinsurance Facility, 333 S.C. 432, 511 S.E.2d 48 (1998).
As to disqualification of members and officers, generally, see §§ 35 to 44.

4 King v. New Jersey Racing Com'n, 103 N.J. 412, 511 A.2d 615 (1986).

5 Walker Pontiac, Inc. v. Department of State, Bureau of Professional and Occupational Affairs, 136 Pa. Commw. 54, 582 A.2d 410 (1990).

Works.

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1. State Law

§ 81. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

A.L.R. Library

Validity, construction, and application of statutes making public proceedings open to the public, 38 A.L.R.3d 1070 (sec. 6(b) superseded in part by Attorney-client exception under state law making proceedings by public bodies open to the public, 34 A.L.R.5th 591)

There is no common-law right to attend meetings of government bodies.[1]However, many states have enacted public meeting statutes, often termed "Sunshine Acts" or "Open Meeting Acts," that provide that meetings of public entities within the state must be open to the public at large.[2]The purpose of such statutes is to promote openness and accountability in government[3]and to prevent the government from conducting the public's business in secret.[4]

Observation:

Sunshine acts are subject to a broad or liberal interpretation that is most favorable to the public.[5]

A violation of the statute may occur not only where the meeting is private but also where the meeting is held in an

inconvenient location[6]or in a room so small as to make it inaccessible for public attendance.[7]However, the law does not require public bodies to conduct public meetings within municipal limits; rather, the only restriction is that meetings be conducted with minimum cost or delay to the public.[8]

Some courts find that official action taken in violation of these statutes is not invalidated,[9]at least in the absence of prejudice,[10]although there is also authority invalidating such action.[11]An invalid act passed in violation of an open meetings act may be ratified in an open meeting although the ratification will only be effective from the date of the meeting in which the valid action was taken.[12]

Under some authority, voluntary committees formed for the purposes of making recommendations to a board are not subject to the state open meetings statute, in the absence of a statute, ordinance, or official act by the board designating the committee as a public or subsidiary body.[13]However, an advisory committee is subject to a state sunshine act where it is officially sanctioned by a governmental body, and such committee takes actions sufficiently similar to the types of formal action found in the sunshine act.[14]

CUMULATIVE SUPPLEMENT

Cases:

While the Open Meetings Law (OML) does not require public bodies to meet, the remedy of voiding certain actions taken without meeting applies to a public body, even if its regulations or practices do not require a meeting. Colo. Rev. Stat. Ann. § 24-6-401. Wisdom Works Counseling Services, P.C. v. Colorado Department of Corrections, 2015 COA 118, 360 P.3d 262 (Colo. App. 2015).

An evaluation team appointed by the Department of Revenue, whose job was to evaluate bid proposals from vendors seeking award of contract to manage the Department's child-support program and to share their evaluations with a negotiation team, had no obligation under the Sunshine Law to conduct open, public meetings; each evaluation team member individually evaluated the competitors' proposals, individually assigned scores, and individually submitted their scores for consideration by others, but never met, collaborated, or discussed the competing proposals, ranked the competitors, or excluded any from consideration by the ultimate decider, the Department's negotiation team. Fla. Const. art. 1, § 23; Fla. Stat. Ann. § 286.011. Carlson v. State, 227 So. 3d 1261 (Fla. 1st DCA 2017).

A court is to analyze the coverage of the Public Meetings Law broadly and its exemptions narrowly. West's Or.Rev. Stat. Ann. § 192.610 et seq. Handy v. Lane County, 274 Or. App. 644, 362 P.3d 867 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Abood v. League of Women Voters of Alaska, 743 P.2d 333 (Alaska 1987); Smith v. Cleveland, 94 Ohio App. 3d 780, 641 N.E.2d 828 (8th Dist. Cuyahoga County 1994).

2 Sarasota Citizens For Responsible Government v. City of Sarasota, 48 So. 3d 755 (Fla. 2010); EarthResources, LLC v. Morgan County, 281 Ga. 396, 638 S.E.2d 325 (2006); Zehner v. Board of Educ. of Jordan-Elbridge Cent. School Dist., 91 A.D.3d 1349, 937 N.Y.S.2d 510, 275 Ed. Law Rep. 963 (4th Dep't 2012).
As to the federal government in the Sunshine Act, see §§ 88 to 97.

3 Armstrong v. Mayor and City Council of Baltimore, 409 Md. 648, 976 A.2d 349 (2009); Wasikowski v. Nebraska Quality Jobs Bd., 264 Neb. 403, 648 N.W.2d 756 (2002); Kearns-Tribune Corp. v. Salt Lake County Com'n, 2001 UT

55, 28 P.3d 686 (Utah 2001).

[4] State ex rel. Newman v. Columbus Tp. Bd., 15 Neb. App. 656, 735 N.W.2d 399 (2007); Smith v. Township of Richmond, 82 A.3d 407 (Pa. 2013).

[5] Galbiso v. Orosi Public Utility Dist., 167 Cal. App. 4th 1063, 84 Cal. Rptr. 3d 788 (5th Dist. 2008); McCrea v. Flaherty, 71 Mass. App. Ct. 637, 885 N.E.2d 836 (2008); Schauer v. Grooms, 280 Neb. 426, 786 N.W.2d 909 (2010).

[6] In re Foxfield Subdivision, 396 Ill. App. 3d 989, 336 Ill. Dec. 512, 920 N.E.2d 1102 (2d Dist. 2009).

[7] Stevens v. City of Hutchinson, 11 Kan. App. 2d 290, 726 P.2d 279 (1986).

[8] Wiedemann v. Town of Hilton Head Island, 344 S.C. 233, 542 S.E.2d 752 (Ct. App. 2001).

[9] Dockside Discotheque, Inc. v. Board of Adjustment of Town of Southern Pines, 115 N.C. App. 303, 444 S.E.2d 451 (1994).

[10] North Pacifica LLC v. California Coastal Com'n, 166 Cal. App. 4th 1416, 83 Cal. Rptr. 3d 636 (2d Dist. 2008).

[11] Sarasota Citizens For Responsible Government v. City of Sarasota, 48 So. 3d 755 (Fla. 2010); Okmulgee County Rural Water Dist. No. 2 v. Beggs Public Works Authority, 2009 OK CIV APP 51, 211 P.3d 225 (Div. 3 2009).

[12] City of San Antonio v. River City Cabaret, Ltd., 32 S.W.3d 291 (Tex. App. San Antonio 2000).

[13] Donahue v. State, 474 N.W.2d 537, 69 Ed. Law Rep. 1158 (Iowa 1991); State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. of Commers., 128 Ohio St. 3d 256, 2011-Ohio-625, 943 N.E.2d 553 (2011).

[14] Frazer v. Dixon Unified School Dist., 18 Cal. App. 4th 781, 22 Cal. Rptr. 2d 641, 85 Ed. Law Rep. 127 (1st Dist. 1993); Animal Legal Defense Fund, Inc. v. Institutional Animal Care and Use Committee of University of Vermont, 159 Vt. 133, 616 A.2d 224, 79 Ed. Law Rep. 130 (1992).

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III. Meetings and Records; Disclosure to Public

B. Requirement that Meetings Be Public; Sunshine Acts

1. State Law

§ 82. Definition of “meeting”

Topic Summary | Correlation Table | References

West’s Key Number Digest

West’s Key Number Digest, Administrative Law and Procedure 124 to 126

The term “meeting” in public meeting laws generally refers to all official deliberations and formal actions[1] of all governmental boards and commissions.[2] The elements of a “meeting” for the purpose of an open meetings act are: (1) a quorum of a public body’s members are present; (2) a decision is deliberated or rendered; and (3) the decision concerns a matter of public policy.[3]

Definition:

Under the open meetings law, a “meeting” is a gathering of a public body quorum at which it acquires information, discusses the information, or makes decisions regarding that information within its jurisdiction.[4]

Courts have found that a function is a “meeting” only where there are to occur deliberative stages of the decision-making process that lead to the formation and determination of public policy.[5] Some statutes provide that the term “meeting” does not include chance or social gatherings that are not intended to circumvent the sunshine law[6] although luncheons to discuss public policy issues have been found to violate an open meetings law[7] as have discussions held during a break in commission meetings.[8]

Some states require a meeting to be formed of a quorum.[9] It has been found that a public body may violate the sunshine act by clothing itself as a sham advisory committee or subcommittee of less than a quorum.[10]

CUMULATIVE SUPPLEMENT

Cases:

The Open Meetings Act (OMA), also known as the Sunshine Law, precludes a public body from taking official action by way of a secret ballot. Ohio Rev. Code Ann. § 121.22. State ex rel. More Bratenahl v. Village of Bratenahl, 157 Ohio St. 3d 309, 2019-Ohio-3233, 136 N.E.3d 447 (2019).

Within the context of the Open Public Meeting Act (OPMA), the Supreme Court would adopt the following definitions: (1) a "meeting" of a governing body occurs when a majority of its members gathers with the collective intent of transacting the governing body's business, (2) a "committee thereof" with respect to a given governing body is an entity that the governing body created or specifically authorized, and (3) a committee acts "on behalf of" a governing body when the committee exercises actual or de facto decision-making authority on behalf of the governing body. West's RCWA 42.30.030. Citizens Alliance for Property Rights Legal Fund v. San Juan County, 359 P.3d 753 (Wash. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Matter of Hutchinson, 440 N.W.2d 171 (Minn. Ct. App. 1989); Babac v. Pennsylvania Milk Marketing Bd., 531 Pa. 391, 613 A.2d 551 (1992).

2 Hinds County Bd. of Sup'rs v. Common Cause of Mississippi, 551 So. 2d 107 (Miss. 1989).

3 Jocham v. Tuscola County, 239 F. Supp. 2d 714 (E.D. Mich. 2003) (applying Michigan law).

4 Chanos v. Nevada Tax Com'n, 124 Nev. 232, 181 P.3d 675 (2008).

5 Hinds County Bd. of Sup'rs v. Common Cause of Mississippi, 551 So. 2d 107 (Miss. 1989); Harris v. Nordquist, 96 Or. App. 19, 771 P.2d 637, 52 Ed. Law Rep. 1281 (1989); Dallas Morning News Co. v. Board of Trustees of Dallas Independent School Dist., 861 S.W.2d 532, 85 Ed. Law Rep. 1244 (Tex. App. Dallas 1993), writ denied, (Mar. 30, 1994).

6 State ex rel. Badke v. Village Bd. of Village of Greendale, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

7 Booth Newspapers, Inc. v. Wyoming City Council, 168 Mich. App. 459, 425 N.W.2d 695 (1988).

8 Thuma v. Kroschel, 506 N.W.2d 14 (Minn. Ct. App. 1993).

9 Slagle v. Ross, 125 So. 3d 117, 299 Ed. Law Rep. 305 (Ala. 2012); Safe Air For Everyone v. Idaho State Dept. of Agriculture, 145 Idaho 164, 177 P.3d 378 (2008); Dewey v. Redevelopment Agency of City of Reno, 119 Nev. 87, 64 P.3d 1070 (2003).
As to the definition of "quorum," generally, see § 79.

10 Booth Newspapers, Inc. v. University of Michigan Bd. of Regents, 444 Mich. 211, 507 N.W.2d 422, 86 Ed. Law Rep. 987 (1993).

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1. State Law

§ 83. Definition of “meeting”—Electronic meetings

Topic Summary | Correlation Table | References

West’s Key Number Digest

West’s Key Number Digest, Administrative Law and Procedure 124 to 126

The availability of electronic media of communications has brought about new interpretations of open meeting laws. A “meeting” within a statutory definition may be conducted by written, telephonic, electronic, wireless, or other virtual means.[1] Thus, the exchange of e-mail messages may constitute a “meeting” within the meaning of an open meetings law even though the mere use or passive receipt of e-mail does not automatically constitute a “meeting.”[2]

Footnotes

1 Claxton Enterprise v. Evans County Bd. of Com’rs, 249 Ga. App. 870, 549 S.E.2d 830 (2001).
A quorum may be found even where some members participate through a telephone conference call on a speaker telephone. Babac v. Pennsylvania Milk Marketing Bd., 531 Pa. 391, 613 A.2d 551 (1992).

2 Wood v. Battle Ground School Dist., 107 Wash. App. 550, 27 P.3d 1208, 155 Ed. Law Rep. 1437 (Div. 2 2001) (the term “meeting” was intended to have a broad definition and includes any meeting at which action is taken regardless of the particular means used to conduct it).

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1. State Law

§ 84. Exceptions to public meetings requirement; executive sessions

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West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

A.L.R. Library

Pending or prospective litigation exception under state law making proceedings by public bodies open to the public, 35 A.L.R.5th 113

Emergency exception under state law making proceedings by public bodies open to the public, 33 A.L.R.5th 731

The state sunshine laws often provide that meetings for certain purposes need not be public.[1]For instance, meetings concerning personnel matters,[2]such as the hiring, firing, performance, compensation, and discipline of public employees,[3]or matters that may prejudice the reputation or character of any person[4]are often, but not always,[5]exempted by public meetings statutes. Some sunshine laws provide for an emergency exception; for a situation to comprise an "emergency," the situation must be unexpected or unforeseen, and it must necessitate immediate action.[6]

Observation:

While sunshine acts are generally construed liberally in favor of openness in conducting public business,[7]the statutory exceptions authorizing closed sessions of legislative bodies are construed narrowly.[8]The exceptions are not to be used to shield the agency from unwanted or unpleasant public input, interference, or scrutiny.[9]

Meetings to discuss strategy and negotiations with respect to pending claims and litigation to which the public agency is a party are also sometimes exempt by public meetings statutes.[10]A meeting with experts may be exempt from the open meetings law where it is a strategy session with respect to proposed litigation.[11]However, there is authority finding there is no exception to the open meetings law for pending criminal investigations.[12]

Meetings, in exempt cases, are by executive session.[13]However, even when a public meetings law permits an executive session, the agency may still conduct a public meeting.[14]Moreover, in certain cases, a violation of the open meeting law by an illegal executive session may be cured by the readoption of an action at a public meeting.[15]

CUMULATIVE SUPPLEMENT

Cases:

Port's five executive sessions included discussions of factors relevant to lease price for proposed large rail terminal, but were not focused on setting minimum price itself, as required to invoke Open Public Meetings Act's (OPMA) minimum price exception; executive sessions involved discussions of duration of exclusivity agreement, proposed lessee's ability to pay for possible environmental cleanup, and construction timelines and costs. Wash. Rev. Code Ann. § 42.30.110(1)(c). Columbia Riverkeeper v. Port of Vancouver USA, 395 P.3d 1031 (Wash. 2017).

[END OF SUPPLEMENT]

Footnotes

1 District Attorney for Northern Dist. v. School Committee of Wayland, 455 Mass. 561, 918 N.E.2d 796, 251 Ed. Law Rep. 898 (2009); Chanos v. Nevada Tax Com'n, 124 Nev. 232, 181 P.3d 675 (2008).

2 Morrow v. Los Angeles Unified School Dist., 149 Cal. App. 4th 1424, 57 Cal. Rptr. 3d 885, 219 Ed. Law Rep. 158 (2d Dist. 2007).

3 Burnett v. Gloucester County Bd. of Chosen Freeholders, 409 N.J. Super. 219, 976 A.2d 444 (App. Div. 2009).

4 City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1316 (Alaska 1982); Mellin v. City of Allentown, 60 Pa. Commw. 114, 430 A.2d 1048 (1981).

5 City of Flagstaff v. Bleeker, 123 Ariz. 436, 600 P.2d 49 (Ct. App. Div. 1 1979) (posttermination hearing subject to open meeting law).

6 Board of Selectmen of Town of Ridgefield v. Freedom of Information Com'n, 294 Conn. 438, 984 A.2d 748 (2010); Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

7 § 81.

8 Page v. MiraCosta Community College Dist., 180 Cal. App. 4th 471, 102 Cal. Rptr. 3d 902, 252 Ed. Law Rep. 278 (4th Dist. 2009).

9 Carter v. Smith, 366 S.W.3d 414, 280 Ed. Law Rep. 1152 (Ky. 2012).

10 Page v. MiraCosta Community College Dist., 180 Cal. App. 4th 471, 102 Cal. Rptr. 3d 902, 252 Ed. Law Rep. 278 (4th Dist. 2009); Carter v. Smith, 366 S.W.3d 414, 280 Ed. Law Rep. 1152 (Ky. 2012).
As to meetings of agencies with their attorneys, see § 85.

[11] Mayor and Aldermen of City of Vicksburg v. Vicksburg Printing and Pub. Co., 434 So. 2d 1333 (Miss. 1983).

[12] Kilgore v. R.W. Page Corp., 261 Ga. 410, 405 S.E.2d 655 (1991).

[13] Shirley v. Chagrin Falls Exempted Village Schools Bd. of Ed., 521 F.2d 1329 (6th Cir. 1975); Berry v. Peoples Broadcasting Corp., 547 N.E.2d 231 (Ind. 1989).
As to notice of executive sessions, see § 86.

[14] Berry v. Peoples Broadcasting Corp., 547 N.E.2d 231 (Ind. 1989).

[15] McLeod v. Chilton, 132 Ariz. 9, 643 P.2d 712 (Ct. App. Div. 1 1981); Benevolent & Protective Order of Elks, Lodge No. 65 v. City Council of Lawrence, 403 Mass. 563, 531 N.E.2d 1254 (1988).

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1. State Law

§ 85. Exceptions to public meetings requirement; executive sessions—Meetings between attorney and agency

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West's Key Number Digest

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Pending or prospective litigation exception under state law making proceedings by public bodies open to the public, 35 A.L.R.5th 113

Attorney-client exception under state law making proceedings by public bodies open to the public, 34 A.L.R.5th 591

A public meetings statute may allow for private meetings between an agency and its attorney, particularly to discuss litigation strategy, where an open meeting might have an adverse impact on the litigation position.[1] Even in the absence of an express statutory exemption in the open meetings act, some courts have found that private meetings between an agency and its counsel are allowed,[2] particularly in cases where the communication concerns a pending investigation, claim, or action and where the disclosure of matters discussed would seriously impair the ability of the public body to conduct the public's business.[3]

Observation:

The pending litigation exception to the open public meetings act empowers a public body to exclude the public to protect any material covered by the attorney-client privilege. If a communication is covered by the privilege, then the public body legitimately may meet with its attorney in closed session.[4]

Footnotes

[1] Doherty v. School Committee of Boston, 386 Mass. 643, 436 N.E.2d 1223, 5 Ed. Law Rep. 222 (1982); Whispering Woods at Bamm Hollow, Inc. v. Middletown Tp. Planning Bd., 220 N.J. Super. 161, 531 A.2d 770 (Law Div. 1987) (discussion of possible settlement within litigation exception).

[2] Fiscal Court of Jefferson County v. Courier-Journal and Louisville Times Co., 554 S.W.2d 72 (Ky. 1977); Cooper v. Williamson County Bd. of Educ., 746 S.W.2d 176, 45 Ed. Law Rep. 853 (Tenn. 1987).

[3] Minneapolis Star & Tribune Co. v. Housing and Redevelopment Authority In and For City of Minneapolis, 310 Minn. 313, 251 N.W.2d 620 (1976); Oklahoma Ass'n of Municipal Attorneys v. State, 1978 OK 59, 577 P.2d 1310 (Okla. 1978); Herald Pub. Co., Inc. v. Barnwell, 291 S.C. 4, 351 S.E.2d 878 (Ct. App. 1986) (attorney-client exception applies when future litigation is a real possibility).

[4] Burnett v. Gloucester County Bd. of Chosen Freeholders, 409 N.J. Super. 219, 976 A.2d 444 (App. Div. 2009).

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1. State Law

§ 86. Notice

Topic Summary | Correlation Table | References

West's Key Number Digest

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The open meetings statutes often require that notice of meetings be given.[1]Notice requirements are generally intended to provide an accurate statement of the time, place, and purpose of a public hearing to those entitled to such notice so that they may attend the hearing and express their views.[2]Where statutes require notice to be given in a certain manner, courts have held that such statutes demand literal compliance,[3]and literal compliance is sufficient even if it does not provide particularly effective notice.[4]Other public meetings statutes, however, do not require notice to the public of governmental meetings.[5]

Observation:

Where notice is required, sometimes, the public meetings statute also requires the notice to contain the agenda of the meeting.[6]The purpose of the agenda requirement is to give some notice of the matters to be considered at the meeting so that persons who are interested will know which matters are under consideration.[7]

Adequate notice of executive sessions may also be required.[8]The resolutions calling for such executive sessions generally must indicate what is to be discussed.[9]

Footnotes

[1] Town of Marble v. Darien, 181 P.3d 1148 (Colo. 2008); Grapski v. City of Alachua, 31 So. 3d 193 (Fla. 1st DCA 2010); City of Postville v. Upper Explorerland Regional Planning Com'n, 834 N.W.2d 1 (Iowa 2013).

[2] Weber v. Town of Saukville, 209 Wis. 2d 214, 562 N.W.2d 412 (1997).

[3] Smith County v. Thornton, 726 S.W.2d 2 (Tex. 1986).

[4] Fielding v. Anderson, 911 S.W.2d 858 (Tex. App. Eastland 1995), writ denied, (Apr. 25, 1996) (notice in inaccessible location).

[5] Dozier v. Norris, 241 Ga. 230, 244 S.E.2d 853 (1978).

[6] Ansonia Library Bd. of Directors v. Freedom of Information Com'n, 42 Conn. Supp. 84, 600 A.2d 1058 (Super. Ct. 1991); Hilliary v. State, 1981 OK CR 78, 630 P.2d 791 (Okla. Crim. App. 1981).

[7] State ex rel. Newman v. Columbus Tp. Bd., 15 Neb. App. 656, 735 N.W.2d 399 (2007).

[8] Previdi v. Hirsch, 138 Misc. 2d 436, 524 N.Y.S.2d 643, 44 Ed. Law Rep. 1282 (Sup 1988) (notice was inadequate where the media were not informed, and the sole notice was posted on a bulletin board on the day of the meeting). As to executive sessions, see § 84.

[9] Houman v. Mayor and Council of Borough of Pompton Lakes, 155 N.J. Super. 129, 382 A.2d 413 (Law Div. 1977).

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2 Am. Jur. 2d Administrative Law § 87

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III. Meetings and Records; Disclosure to Public

B. Requirement that Meetings Be Public; Sunshine Acts

1. State Law

§ 87. Standing to bring action for possible violation of public meeting law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

Standing to bring an action for the violation of a public meeting law may be possessed by any interested person, including a member of the news media; this includes taxpayers of the municipality involved.[1]The purpose of the action may be to stop, prevent, or reverse a violation or threatened violation of an open meetings law by members of a governmental body.[2]Courts have also found that any person who might be affected by a decision has standing to see that the decision is made in compliance with the open meetings law.[3]Even more broadly, "any person" may have standing to seek enforcement of a sunshine act regardless of whether he or she is an aggrieved party as a result of an official action deliberated or decided upon in a closed meeting.[4]

Caution:

Even though private parties have standing to seek injunctive and mandamus relief, it has been found that only prosecutors have standing to void governmental acts based upon violations of an open meetings act.[5]If the prosecutor fails to bring an action, however, a "relator" may be seen as a private attorney general who vindicates his or her own rights and the rights of the public to open government. A prevailing relator, therefore, may be awarded attorney's fees if the award would advance the purpose of the law.[6]

Courts have also found that resident corporations[7]and unincorporated associations of residents[8]have standing to bring an action under such laws. Members of the news media[9]and publishers also may have standing to bring an action with respect to the violation of an open meetings act since newspapers have a unique role and interest in observing government activity and

informing the public.[10]

Footnotes

1 Finlan v. City of Dallas, 888 F. Supp. 779 (N.D. Tex. 1995) (construing Texas statute).

2 Friends of Canyon Lake, Inc. v. Guadalupe-Blanco River Authority, 96 S.W.3d 519 (Tex. App. Austin 2002).

3 Harris v. Nordquist, 96 Or. App. 19, 771 P.2d 637, 52 Ed. Law Rep. 1281 (1989).

4 State ex rel. Mason v. State Emp. Relations Bd., 133 Ohio App. 3d 213, 727 N.E.2d 181 (10th Dist. Franklin County 1999).

5 City of Topeka v. Watertower Place Development Group, 265 Kan. 148, 959 P.2d 894 (1998).

6 State ex rel. Hodge v. Town of Turtle Lake, 180 Wis. 2d 62, 508 N.W.2d 603, 35 A.L.R.5th 827 (1993).

7 Metropolitan Air Research Testing Authority, Inc. v. Metropolitan Government of Nashville and Davidson County, 842 S.W.2d 611 (Tenn. Ct. App. 1992).

8 Curve Elementary School Parent and Teachers' Organization v. Lauderdale County School Bd., 608 S.W.2d 855 (Tenn. Ct. App. 1980).

9 Hays County v. Hays County Water Planning Partnership, 69 S.W.3d 253 (Tex. App. Austin 2002).

10 Press-Enterprise, Inc. v. Benton Area School Dist., 146 Pa. Commw. 203, 604 A.2d 1221, 73 Ed. Law Rep. 1018 (1992).

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2. Federal Government in the Sunshine Act

§ 88. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

The federal open meetings law is contained in the Government in the Sunshine Act, also popularly known as the Open Meetings Act. The Act was enacted to assure that the public may obtain to the fullest practicable extent information regarding the decision-making processes of the federal government. The law is designed to provide the public with such information while protecting the rights of individuals and the ability of the government to carry out its responsibilities.[1]

Footnotes

[1] Historical and Statutory Notes to 5 U.S.C.A. § 552b.
6 C.F.R. §§ 1003.1 to 1003.9 implement the provisions of the Government in the Sunshine Act.

2 Am. Jur. 2d Administrative Law § 89

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2. Federal Government in the Sunshine Act

§ 89. Open meetings; definitions of “agency” and “member”

Topic Summary | Correlation Table | References

West’s Key Number Digest

West’s Key Number Digest, Administrative Law and Procedure 124 to 126

A.L.R. Library

What is “agency” within meaning of Federal Sunshine Act (5 U.S.C.A. sec. 552b), 68 A.L.R. Fed. 842

The Government in the Sunshine Act generally provides that, except as otherwise provided, every portion of every meeting of a federal agency must be open to public observation, and members of an agency may not jointly conduct or dispose of agency business other than in accordance with the law.[1] An “agency” includes any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President) or any independent regulatory agency.[2] For purposes of the Act, an agency is headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate and any subdivision thereof authorized to act on behalf of the agency.[3]

A “member” is an individual who belongs to a collegial body heading an agency.[4] A board or panel that does not contain members of an agency is not a subdivision of an agency under the Act, meaning that the Act does not apply to hearings of a licensing board which does not contain any members of the agency.[5]

Footnotes

[1] 5 U.S.C.A. § 552b(b).

[2] 5 U.S.C.A. § 552b(a)(1), which incorporates the definition of “agency” found in 5 U.S.C.A. § 552(f)(1).

[3] 5 U.S.C.A. § 552b(a)(1).

[4] 5 U.S.C.A. § 552b(a)(3).

[5] Hunt v. Nuclear Regulatory Commission, 611 F.2d 332 (10th Cir. 1979).

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III. Meetings and Records; Disclosure to Public

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2. Federal Government in the Sunshine Act

§ 90. Definition of “meeting”

Topic Summary | Correlation Table | References

West’s Key Number Digest

West’s Key Number Digest, Administrative Law and Procedure 124 to 126

For purposes of the Federal Government in the Sunshine Act, the term “meeting” means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business.[1] The statutory language limiting the Act’s application to deliberations that “determine or result in” the conduct of “official agency business” contemplates discussions that effectively predetermine official actions. Such discussions must be sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency. Thus, the deliberations of a quorum of a subdivision of an agency upon matters not within the subdivision’s formally delegated authority do not constitute “meetings” within the meaning of the Act since such deliberations cannot determine or result in joint conduct or disposition of official agency business. Similarly, a series of joint planning conferences do not constitute meetings “of an agency” within the meaning of the Act where the sessions are not convened by the regulatory agency and are not subject to the agency’s unilateral control.[2]

Observation:

A conversation between a member of an agency and members of the regulated industry do not constitute a “meeting” under the open meetings provisions of the Sunshine Act although such a conversation may constitute an ex parte contact.[3]

Footnotes

1 5 U.S.C.A. § 552b(a)(2).

2 F.C.C. v. ITT World Communications, Inc., 466 U.S. 463, 104 S. Ct. 1936, 80 L. Ed. 2d 480 (1984).

3 Action For Children’s Television v. F.C.C., 564 F.2d 458 (D.C. Cir. 1977).

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§ 91. Exemptions from open meeting requirement

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

A.L.R. Library

Construction and application of exemptions, under 5 U.S.C.A. sec. 552b(c), to open meeting requirement of Sunshine Act, 82 A.L.R. Fed. 465

The Government in the Sunshine Act contains exemptions from the open meeting requirements. The Act provides that, except in a case where the agency finds that the public interest requires otherwise, specified open meeting requirements do not apply where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to:[1]

(1) disclose matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute, other than the Freedom of Information Act, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that production would interfere with the enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, constitute an unwarranted invasion of personal privacy, disclose the identity of a confidential source (and, under certain circumstances, confidential information disclosed by the source), disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would: (a) lead to significant financial speculation in currencies, securities, or commodities or significantly endanger the stability of any financial institution; or (b) be likely to significantly frustrate implementation of proposed agency action, except where the agency has already disclosed the content or nature of its proposed action or the agency is required by law to make such disclosure on its own initiative prior to taking final agency action; and

(10) specifically concern the agency's issuance of a subpoena; or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration; or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication.

Observation:

Where an agency's decision to close a meeting is challenged, the agency bears the burden of establishing that its meeting is subject to at least one of the 10 statutorily defined grounds for closure.[2]

Footnotes

1 5 U.S.C.A. § 552b(c).

2 Philadelphia Newspapers, Inc. v. Nuclear Regulatory Com'n, 727 F.2d 1195, 82 A.L.R. Fed. 449 (D.C. Cir. 1984).

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2 Am. Jur. 2d Administrative Law § 92

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III. Meetings and Records; Disclosure to Public

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2. Federal Government in the Sunshine Act

§ 92. Procedure for closing meeting

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

Forms

Forms relating to closed meetings, generally, see Federal Procedural Forms, Administrative Procedure [Westlaw® Search Query]

Pursuant to the Government in the Sunshine Act, action to close a meeting will be taken only when a majority of the entire membership of the agency votes to take such action, and the agency must comply with the voting requirements specified in the Act.[1]Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public because private information or information regarding a crime or a criminal investigation is to be discussed, the agency, upon request of any one of its members, must vote by recorded vote whether to close such meeting.[2]Within one day of the vote, the agency must make publicly available a written copy of its vote and a full written explanation of its action closing the meeting together with a list of all persons expected to attend the meeting and their affiliation.[3]

If a majority of an agency's business consists of regulating financial institutions or preparing adjudications, it may provide by regulation for the closing of meetings or portions of meetings in which such topics are discussed. If such regulations are enacted, the voting requirements and the public announcement requirements of the Act do not apply to any portion of a meeting to which the regulations apply provided that the agency, except to the extent that such information is exempt from disclosure under the Act, provides the public with an announcement of the time, place, and subject matter of the meeting and of each portion of the meeting at the earliest practicable time.[4]

Observation:

For every meeting closed pursuant to the Act's statutory exemptions, the General Counsel or chief legal officer of the agency must publicly certify that, in his or her opinion, the meeting may be closed to the public, and he or she must state each relevant exemptive provision.[5]

Footnotes

1 5 U.S.C.A. § 552b(d)(1).

2 5 U.S.C.A. § 552b(d)(2).

3 5 U.S.C.A. § 552b(d)(3).

4 5 U.S.C.A. § 552b(d)(4).

5 5 U.S.C.A. § 552b(f)(1).

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III. Meetings and Records; Disclosure to Public

B. Requirement that Meetings Be Public; Sunshine Acts

2. Federal Government in the Sunshine Act

§ 93. Public announcement of meetings

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

Forms

Forms relating to open meetings, generally, see Federal Procedural Forms, Administrative Procedure [Westlaw® Search Query]

The Federal Government in the Sunshine Act contains detailed provisions regarding public announcements of government meetings. Such notice must be given whether the meeting is to be opened or closed[1] and must be published in the Federal Register.[2] Provision is also made for any changes in the time or place or subject matter of the meeting or the determination whether to open or close a meeting or a portion thereof to the public.[3]

Footnotes

1 5 U.S.C.A. § 552b(e)(1).

2 5 U.S.C.A. § 552b(e)(3).

3 5 U.S.C.A. § 552b(e)(2).

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2 Am. Jur. 2d Administrative Law § 94

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III. Meetings and Records; Disclosure to Public

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2. Federal Government in the Sunshine Act

§ 94. Court actions: challenging agency regulations or failure to enact them

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

A.L.R. Library

Availability of judicial review of agency compliance with Sunshine Act (5 U.S.C.A. sec. 552b(g) and (h)), 84 A.L.R. Fed. 251

Each agency subject to the requirements of the Federal Government in the Sunshine Act must promulgate regulations to implement the requirements of the Act. Any person may bring a proceeding in the U.S. District Court for the District of Columbia to require an agency to promulgate such regulations if the agency has not promulgated the regulations within the time period specified. Subject to any limitations of time provided by law, any person may bring a proceeding in the U.S. Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this provision that are not in accord with the requirements of the Act and to require the promulgation of regulations that are in accord with such provisions.[1]

Footnotes

[1] 5 U.S.C.A. § 552b(g).

Works.

2 Am. Jur. 2d Administrative Law § 95

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2. Federal Government in the Sunshine Act

§ 95. Court actions: for injunctive, declaratory, or other relief

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

A.L.R. Library

Availability of judicial review of agency compliance with Sunshine Act (5 U.S.C.A. sec. 552b(g) and (h)), 84 A.L.R. Fed. 251

The district courts of the United States have jurisdiction to enforce the requirements of the Federal Government in the Sunshine Act by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within 60 days after, the meeting out of which the violation of the Act arises. If public announcement of such meeting is not initially provided by the agency in accordance with the Act, an action may be instituted at any time prior to 60 days after any public announcement of such meeting.[1]

Such actions may be brought in the district court of the United States for the district in which the agency meeting is held, or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions, a defendant must serve an answer within 30 days after the service of the complaint. The burden is on the defendant to sustain his or her action. In deciding such cases, the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate.[2]

Caution:

Nothing in the Act authorizes any federal court having jurisdiction solely on the basis described above[3] to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under the Act) taken or discussed at any agency meeting out of which the violation of the Act arose.[4]

CUMULATIVE SUPPLEMENT

Cases:

Appropriate remedy for Unified Carrier Registration Plan Board's failure to publicly announce information in Federal Register regarding meeting in which it decided to postpone start of annual registration period for motor carriers, brokers, and freight forwarders, in violation of Sunshine Act, was to compel Board to release any draft minutes, transcripts, and recordings of meeting, rather than injunctive relief reversing Board's action; district court lacked authority to invalidate agency action taken at non-conforming meeting, plaintiffs did not claim to have participated in meeting, and serious violation of Act prejudicing plaintiffs and warranting invalidation of Board's action was not demonstrated. 5 U.S.C.A. §§ 552b(e)(1), 552b(e)(3), 552b(h)(1), 552b(h)(2); 49 U.S.C.A. § 14504a. 12 Percent Logistics, Inc. v. Unified Carrier Registration Plan Board, 282 F. Supp. 3d 190 (D.D.C. 2017).

[END OF SUPPLEMENT]

Footnotes

1 5 U.S.C.A. § 552b(h)(1).

2 5 U.S.C.A. § 552b(h)(1).

3 5 U.S.C.A. § 552b(h)(1).

4 5 U.S.C.A. § 552b(h)(2).

2 Am. Jur. 2d Administrative Law § 96

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III. Meetings and Records; Disclosure to Public

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2. Federal Government in the Sunshine Act

§ 96. Court actions: for judicial review of agency action

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

A.L.R. Library

Availability of judicial review of agency compliance with Sunshine Act (5 U.S.C.A. sec. 552b(g) and (h)), 84 A.L.R. Fed. 251

Any federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of the Federal Government in the Sunshine Act and afford such relief as it deems appropriate.[1]

Footnotes

[1] 5 U.S.C.A. § 552b(h)(2).
As to judicial review of agency action, generally, see §§ 383 to 559.

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2 Am. Jur. 2d Administrative Law § 97

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2. Federal Government in the Sunshine Act

§ 97. Attorney's fees

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 124 to 126

A party who substantially prevails in an action brought under the Federal Government in the Sunshine Act may be awarded reasonable attorney's fees and other litigation costs reasonably incurred. Costs may be assessed against the plaintiff, however, only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.[1]

Footnotes

[1] 5 U.S.C.A. § 552b(i).

2 Am. Jur. 2d Administrative Law III C Refs.

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III. Meetings and Records; Disclosure to Public

C. Agency Minutes, Records, and Reports

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 127

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III. Meetings and Records; Disclosure to Public

C. Agency Minutes, Records, and Reports

§ 98. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 127

Boards and commissions speak or act officially only through the minutes and records made at duly organized meetings.[1] Statutes may have specific requirements for the keeping of minutes or records.[2] Unless otherwise required by law, the formal record of a public proceeding consists of the minutes of the hearing and the formal findings and order.[3]

Footnotes

1 City of Indianapolis v. Duffitt, 929 N.E.2d 231 (Ind. Ct. App. 2010).

2 Pet v. Department of Health Services, 228 Conn. 651, 638 A.2d 6 (1994); Titus v. Shelby Charter Tp., 226 Mich. App. 611, 574 N.W.2d 391 (1997); Harris v. Nordquist, 96 Or. App. 19, 771 P.2d 637, 52 Ed. Law Rep. 1281 (1989).

3 Dairy Product Services, Inc. v. City of Wellsville, 2000 UT 81, 13 P.3d 581 (Utah 2000).

2 Am. Jur. 2d Administrative Law § 99

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III. Meetings and Records; Disclosure to Public

C. Agency Minutes, Records, and Reports

§ 99. Closed meetings under Federal Government in the Sunshine Act

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 127

If a meeting is closed in accordance with the Federal Government in the Sunshine Act,[1] an agency must maintain a complete transcript or electronic recording which adequately and fully records the proceedings. In the case of a meeting, or a portion thereof, closed to the public because reports of bank examinations, information which affects financial markets, or information regarding impending litigation is to be discussed, the agency must maintain either a transcript, a recording, or a set of minutes that fully and clearly describes all matters discussed and fully and accurately summarizes any actions taken and the reasons for them.[2] The agency must make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes described above except for such items that contain information which is exempt from disclosure.[3]

Footnotes

1 §§ 91, 92.

2 5 U.S.C.A. § 552b(f)(1).

3 5 U.S.C.A. § 552b(f)(2).

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2 Am. Jur. 2d Administrative Law § 100

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III. Meetings and Records; Disclosure to Public

C. Agency Minutes, Records, and Reports

§ 100. Inspection of records and papers of administrative agencies

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Administrative Law and Procedure 127

A historically strong and persuasive public policy requires liberality in the right to examine public records under the common law,[1]under which every person is entitled to inspect public records provided that he or she has the requisite interest in them that outweighs the State's interest in nondisclosure.[2]Apart from a statutory right, a party to a proceeding before an administrative tribunal in which he or she is entitled to a hearing may be entitled to inspect the records and data of the tribunal to secure information or evidence to be used in such hearing, but this right cannot extend to a general examination that would seriously impede the work of the tribunal.[3]

Statutes frequently confer the right to examine the records and papers of administrative agencies, and in such cases, the extent of the right is determined by the statute.[4]Pursuant to federal law, the right of a member of the public to inspect agency records may be regulated by the Freedom of Information Act[5]and the Privacy Act.[6]Nothing in the Government in the Sunshine Act authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by the Act, which is otherwise accessible to such individual under the Privacy Act.[7]

Footnotes

1 Am. Jur. 2d, Records and Recording Laws § 17.

2 Am. Jur. 2d, Records and Recording Laws § 22.

3 U.S. ex rel. St. Louis Southwestern Ry. Co. v. Interstate Commerce Commission, 264 U.S. 64, 44 S. Ct. 294, 68 L. Ed. 565 (1924).

4 Previdi v. Hirsch, 138 Misc. 2d 436, 524 N.Y.S.2d 643, 44 Ed. Law Rep. 1282 (Sup 1988); Harris v. Nordquist, 96 Or. App. 19, 771 P.2d 637, 52 Ed. Law Rep. 1281 (1989).

[5] 5 U.S.C.A. § 552, as discussed in Am. Jur. 2d, Freedom of Information Acts §§ 1 et seq.

[6] 5 U.S.C.A. § 552a, as discussed in Am. Jur. 2d, Freedom of Information Acts §§ 358 to 401.

[7] 5 U.S.C.A. § 552b(m).

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